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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – NORTHERN DIVISION

In re:

HVI CAT CANYON, INC.,

Debtor.

§ Chapter 11
§
§ Case No. 9:19-bk-11573-MB
§
§ **OMNIBUS REPLY TO**
§ **OPPOSITIONS OF THE TRUSTEE**
§ **AND UBS TO MOTION FOR**
§ **APPROVAL AND PAYMENT OF**
§ **ADMINISTRATIVE CLAIMS**
§
§ Date: May 19, 2020
§ Time: 10:30 a.m. [PT]
§ Place: Courtroom 201
§ 1415 State Street
§ Santa Barbara, California
§

GIT, Inc., California Asphalt Production, Inc., and GTL1, LLC (“GIT”, “CAP”, “GTL”, and collectively, the “Claimants”) hereby file this reply (“Reply”) to the *Opposition of UBS AG, London Branch and UBS AG, Stamford Branch to Notice of Motion and Motion for Approval and Payment of Administrative Claims* [ECF 972] (“UBS” and “UBS Opposition”) and the *Trustee’s Notice of Opposition and Opposition to Motion for Approval and Payment of Administrative Claims Filed by*

1 *GIT., Inc., California Asphalt Production, Inc., and GTLI, LLC* [ECF 976] (“Trustee”, “Trustee
2 Opposition”, and with the UBS Opposition, the “Oppositions”). The Claimants address the key points
3 raised in the Oppositions below.

4
5 **REPLY TO TRUSTEE OPPOSITION**

6 The Trustee makes a series of arguments, each of which lacks merit or fails to address the
7 relevant legal standards.

8 *First*, the Trustee argues that the Motion is premature, and thus should either be denied
9 without prejudice or the hearing continued, because there is no available money to pay
10 administrative claims. Trustee Opposition at 13-14. However, the Claimants have not requested
11 immediate payment of the administrative claims, and have deferred to the Court’s discretion
12 concerning the timing of the payments. For example, the Claimants have no objection to receiving
13 payments on account of their administrative claims after consummation of a sale of confirmation
14 of a plan. The Trustee’s argument that there is no money to pay administrative claims does not
15 moot the request to allow those claims.
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17 *Second*, the Trustee argues that the Motion is premature because UBS has superpriority
18 over administrative expense claims. Trustee Opposition at 14. This is a red herring. The Motion
19 does not seek payment of the administrative claims ahead of UBS.
20

21 *Third*, the Trustee argues that the dispute should be adjudicated in an adversary
22 proceeding. Trustee Opposition at 15-16. This argument lacks merit. The Trustee concedes that
23 motions to allow and pay administrative expense claims are properly contested matters. *Id.* at
24 15:26-27 (“[R]equests for payment of administrative expenses are allowed after ‘notice and a
25 hearing,’ giving rise to ‘contested matters’ governed by FRBP 9014.”). To the extent that the
26 Trustee believes that the claims may be reduced by setoff, he can assert that argument in a
27 contested matter. *See In re Orexigen Therapeutics, Inc.*, 596 B.R. 9 (Bankr. D. Del. Nov. 13,
28

2018) (ruling on setoff issue as a contested matter) *aff'd* 2020 WL 42824 (D. Del. Jan. 3, 2020)
appeal filed Case No. 20-1136 (3d Cir. Feb 4, 2020).¹ The Trustee has not identified any other
disputes that would require adjudication via adversary proceeding.

Fourth, the Trustee argues that the claims should be treated as a contested matter with all
adversary proceeding rules applied, or consolidated with the adversary proceeding involving GLR
LLC and GRL LLC. Trustee Opposition at 17-18. The Trustee's argument lacks merit. Disputes
between the Trustee, on the one hand, and GLR LLC and GRL LLC, on the other hand, have no
bearing on the claims asserted in the Motion, because those are different entities with rights under
different contracts and through real property interests. Moreover, all of the discovery that the
Trustee may seek (such as requests for documents and depositions) is available in contested
matters. *See* Fed. R. Civ. Proc. 9014(c).

Fifth, the Trustee asserts that it is premature to argue the merits because he requires time to
develop the record. Trustee Opposition at 18. He argues that he intends to develop certain
defenses and counter-arguments. *Id.* For example, he argues that the Claimants are not entitled to
administrative priority because their purported extension of credit was not approved by the Court.
Id. at 19. However, the Trustee does not dispute that the Claimants actually provided credit, that
the debtor-in-possession and Trustee accepted that credit, and that the credit was extended in the
ordinary course of the debtor's business. Thus, Court approval was not required under section
364(a). The Trustee's remaining arguments refer to either payment of the claims, or discuss
unrelated claims the Trustee is investigating against the Claimants. *Id.* at 19. Arguments
concerning the payment of claims are irrelevant, because the Claimants are not seeking immediate

¹ The Trustee asserts that CAP's claims may be reduced by setoff, but does not assert the same
with respect to GIT or GTL. Moreover, it appears that the Trustee is no longer asserting that CAP
setoff any of its claims against amounts owed to HVI. Indeed, CAP is asserting claims against the
estate, and it appears that the estate intends to assert its own claims against CAP.

1 payment. And arguments concerning the Trustee's investigation of other claims are irrelevant,
2 because the Trustee is free to investigate such claims and assert them if and when he feels it is
3 appropriate to do so.

4 *Last*, the Trustee argues that the Claimants have not met their burden because there is no
5 evidence regarding prepetition transactions between HVI and the Claimants. That is not true – the
6 Trustee himself attached prepetition invoices that show the amounts billed prepetition were
7 generally consistent with amounts billed postpetition. *Compare* ECF 976 at 100 (prepetition GIT
8 invoice for \$195,520.60), 101 (prepetition CAP invoice for \$313,235.63), 106 (prepetition GTL
9 invoice for \$192,214), 109 (prepetition CAP invoice for marketing fees for \$1,742.37) *with* ECF
10 946 at 73 (postpetition GIT invoice for \$122,093.51), 79 (postpetition CAP invoice for
11 \$447,466.88), 96 (postpetition GTL invoice for \$235,038), 84 (postpetition CAP invoice for
12 marketing fees of \$737.16). Moreover, the Trustee does not dispute that: 1) the Claimants actually
13 provided unsecured credit to the estate; 2) the credit was extended in the ordinary course of the
14 debtor's business; 3) the debtor-in-possession and Trustee accepted that credit; and 4) he did not
15 dispute or object to the vast majority of the invoices he received, even though he received them
16 months ago. This means that the claims are automatically entitled to administrative priority under
17 section 364(a) of the Bankruptcy Code.²
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25 ² The Trustee asserts that there is a \$15,000 discrepancy between one invoice he received and
26 one of the invoices attached to the Motion. Trustee Opposition at 21. That one invoice does not
27 change the fact there is no dispute that the Trustee accepted services and never objected to the vast
28 majority of the invoices that he received. The only objection was apparently for amounts billed by
GIT in October 2019 above \$156,000. ECF 976 at 113. The claims should be allowed, at a
minimum, in the amounts for which there was no objections or disputes.

REPLY TO UBS OPPOSITION

UBS' Opposition fares no better than the Trustee.³ *First*, UBS argues that the Claimants have not provided evidence to support their request for administrative claims, asserting that the amounts in the invoices do not match the amounts asserted in the Motion. That is because, as explained in the Motion, GIT is not seeking allowance of legal fees as administrative expenses. Motion at 3 n.1.

UBS goes on to argue that there is no admissible evidence that the Claimants entered into contracts with HVI, or that the goods and services were provided pursuant to the terms of those contracts. That argument is disingenuous. The Claimants explained that they provided goods and services to HVI, noted that operators of oil and gas wells often contract for those services, attached the relevant contracts, and attached the invoices for amounts billed for goods and services provided under those contracts. Olivares Decl. ¶¶ 3-6. The Claimants also specifically cited evidence that after his appointment, the Trustee continued to utilize the services provided by GIT, CAP, and GTL. Motion at 2-3 (citing Olivares Decl. ¶ 9, 11, 13). And they cited several documents publicly filed by the Trustee demonstrating that the Trustee continued to utilize goods and services provided by those entities. Motion at 2-3. Additionally, the Trustee does not dispute that goods and services were provided, and that they were provided under the relevant contracts. *See* Trustee Opposition.

UBS also argues that there is no evidence that the expenses reflected in the invoices benefitted the estate. This is again disingenuous. UBS specifically admits that certain goods provided by CAP are "useful in running an oil production business," UBS Opposition at 4, and does not dispute that administrative services by GIT, such as processing payroll, and that trucking

³ It is not entirely clear why UBS opposes the Motion. The Claimants did not request in the Motion that they receive payment ahead of UBS.

1 services by GTL to move oil, benefitted the estate. Nor do UBS or the Trustee dispute that the
2 Trustee actually accepted these services. Why would the Trustee, an estate fiduciary, accept the
3 goods and services unless they benefitted the estate?

4 UBS next asserts that black-letter law holding that contract rates are presumed reasonable
5 does not apply to these contracts. That argument relies on a misreading of *In re Cook Inlet Energy*
6 *LLC*, 583 B.R. 494, 505 (B.A.P. 9th Cir. 2018). Contrary to UBS' argument, in that case, the
7 Bankruptcy Appellate Panel did not decline to apply the contract presumption because the contract
8 was with an insider. *Id.* (not using the term insider). The reason it did not apply the contract
9 presumption was because the contract was an employment contract for management services, for
10 which there is no marketplace. To the contrary, here, there is a marketplace for the goods and
11 services provided by the Claimants, and the Claimants submitted admissible evidence from an
12 individual with 33 years of experience in the oil and gas industry that the rates charged were
13 generally below those charged in the oil and gas industry. Olivares Decl. ¶ 7.⁴ Notably, the
14 Trustee refused, when asked, to provide copies of contracts or invoices for any substitute goods
15 and services he procured after rejecting the GIT, CAP and GTL contracts. Certainly, these
16 replacement contracts could shed light on this argument, yet the Trustee refused to share them.

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19 Most importantly, UBS does not dispute that the goods and services were provided in the
20 ordinary course of HVI's business, and that the Trustee accepted the vast majority of the services
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24 ⁴ UBS also argues that that the Motion stated that "GIT 'advanced' funds after improper set-
25 off by the Claimants left the Trustee with n funds to operate the estate when he arrived." UBS
26 Opposition at 5. UBS does not actually cite the Motion, because no such statement or argument
27 was made in the Motion. To the extent that UBS is referring to CAP's prepayment to the Trustee,
28 the Motion specifically cites the Trustee's motion to accept the prepayment, and UBS admits that
the prepayment was made. UBS Opposition at 5 n.17. Additionally, to the extent that UBS is
referring to any allegations that CAP set off any postpetition payments, that is incorrect, because
no setoff has actually occurred, and there is no evidence that a setoff has actually occurred.

1 without ever objecting to the amounts billed. That means that the claims are entitled to
2 administrative priority under either section 364(b) or 503(b).

3 *Second*, UBS argues that the claims cannot be paid before UBS' liens. UBS Opposition at
4 7. This is a red herring. The Motion does not seek payment of administrative claims ahead of
5 secured claims. Nor does the Motion seeks immediate payment. Motion at 9. It only seeks equal
6 treatment with other administrative claimants. That can be accomplished, for example, by making
7 in parri passu payments to all allowed administrative claimants, escrowing funds for the
8 Claimants, or reserving the Claimants' rights to seek disgorgement of already paid administrative
9 claims if necessary to achieve equal treatment.
10

11 *Third*, UBS asserts, contrary to well-settled Supreme Court precedent and the fundamental
12 policy of equal treatment of similarly situated creditors, that even if the Claimants are allowed
13 administrative claims, they should not receive equal treatment with other administrative claims.
14 UBS Opposition at 6. Its position is that providing equal treatment to the Claimants would
15 somehow "prioritize these claims over other administrative claims that were properly given
16 priority through the Court's orders." Opposition at 7. But, UBS does not cite any order
17 preventing the Trustee from paying for goods and services that he voluntarily accepted. It argues
18 that the cash collateral and financing orders prohibit payment to GIT for "prepetition work or
19 claims." *Id.* at 8. But GIT is only seeking reimbursement for postpetition work. Similarly, UBS
20 argues that the cash collateral and financing order limit payments to insiders and affiliates, but the
21 provision it cites (limiting insider or affiliate royalty payments, surface lease payments, or
22 professional fee payments), does not impact the goods and services provided by the Claimants.
23

24 *Fourth*, UBS asserts that the Claimants have not satisfied the scrutiny for insider claims.
25 However, as discussed above, there is ample evidence that the Claimants provided services, the
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1 Trustee accepted those services, and that the Trustee did not object to the vast majority of the
2 invoices.

3 *Fifth*, UBS argues that the Claimants cannot demand payment exceeding the approved
4 budgets in this case. Opposition at 9-10. But there is no dispute that the Claimants have not even
5 received the budgeted amounts. Therefore, at a minimum, the Claimants are entitled to
6 administrative claims in the budgeted amounts for which they have not been paid.⁵

7
8 *Sixth*, UBS argues that payments to GIT and CAP are barred by a subordination and credit
9 agreement with UBS. UBS Opposition at 12. This is again a red herring. The Motion does not
10 seek payment of the administrative claims ahead of UBSs' pre-petition secured claims.

11 *Last*, UBS argues that the Claimants are not entitled to administrative claims because they
12 have received and not returned avoidable transfers. UBS Opposition at 12. But there is no
13 evidence of any avoidable transfers. No postpetition setoffs have actually occurred, and the
14 Trustee has not asserted any avoidance claims, formally or informally, against the Claimants.

15
16 For the reasons stated above, the Motion should be granted in the following amounts: 1)
17 \$1,584,426.38 for CAP; 2) \$599,984.20 for GTL; and 3) \$468,530.76 for GIT.

18 DATED: May 12, 2020

Respectfully submitted,

19 QUINN EMANUEL URQUHART & SULLIVAN LLP

20 By: /s/ Razmig Izakelian

21 Patricia B. Tomasco

Razmig Izakelian

22
23 Attorneys for GIT, Inc., California Asphalt Production,
24 Inc., and GTL1, LLC

25
26 ⁵ Claimants acknowledge that CAP received \$313,235.62 in August 2019 and \$347,820 in
27 September 2019, and that GTL received \$181,733 in August 2019 and \$198,000 in September
28 2019. Thus, CAP reduces its request to \$1,584,426.38, and GTL reduces its request to
\$599,984.20. GIT has not received payments for postpetition services. Excluding all line items
for professional fees and legal fees in the invoices, its claim is \$468,530.76.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017

A true and correct copy of the foregoing document entitled (*specify*): OMNIBUS REPLY TO OPPOSITIONS OF THE TRUSTEE AND UBS TO MOTION FOR APPROVAL AND PAYMENT OF ADMINISTRATIVE CLAIMS

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 05/12/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/12/2020 Razmig Izakelian
Date Printed Name

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Signature

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